

**IDAHO REAL ESTATE COMMISSION
MEETING MINUTES
January 17, 2008**

Pursuant to notice given, the meeting of the Idaho Real Estate Commission (Commission) was held at the Idaho Real Estate Commission, 633 North Fourth Street, Boise, Idaho, on Thursday, January 17, 2008 at 8:30 a.m.

Commission Members Present:

Steve Kohntopp, Chair, Filer
Andy Enrico, Vice Chair, Boise
Kelly Fisher, Member, Pocatello
Pam Trees, Member, Lewiston
Comprising a quorum of the Commission

Members Absent:

Staff Present:

Jeanne Jackson-Heim, Executive Director
Craig Boyack, Chief Investigator
Don Morse, Investigator
Tammy Anderson, Administrative Assistant
Clorissa Cintorino, Inspector
Kelly England, Office Specialist II

Others Present:

Kim Coster, Commission Legal Counsel
See attached list

Meeting was called to order at 8:25 a.m. by Commission Chair, Steve Kohntopp.

Introductions:

- a. Commissioners
- b. Staff
- c. New Staff Clorissa Cintorino and Kelly England

Approval of Meeting Minutes: Motion was made by Kelly Fisher to approve the November 29, 2007 Commission meeting minutes. Motion carried.

Approval of Agenda: Motion was made by Kelly Fisher to approve the January, 2008 agenda. Motion carried.

Financial Reports: Motion was made by Kelly Fisher to approve the November and December 2007 Financial Reports. Motion carried.

Salesperson and Broker Licenses Issued: Members reviewed the salesperson and broker licenses issued during the months of November and December 2007, a copy of which has been made part of these minutes. Motion was made by Kelly Fisher to approve the reports. Motion carried.

License Examination Statistics

Commissioners reviewed the license exam statistics report.

Staff Reports:

Enforcement:

The following reports were presented for members' review; copies of which are on file at the Commission office:

- **Complaint Summary Report**
- **Audit Report**
- **Phone Log**

Licensure:

The following reports were presented for members' review; copies of which are on file at the Commission office:

- **FY07-FY08 Analysis of Active & Inactive License Base:**
- **On-Line Renewal Reports:**

Information and Technology Reports:

Members reviewed the Information and Technology reports; copies of which are on file at the Commission Office.

Online Lottery Drawing: Dan K. Mader, (SP34143), from Coldwell Banker Tomlinson Associates, Lewiston, won the lottery drawing for December 2007. Michael James Brawner, (DB34121), from Santa Fe, CA won the lottery drawing for January 2008.

Commission's Counsel Report:

- **Response to Steve Taggart Letter:** Kim Coster reported she had not sent her responsive letter to Mr. Taggart in light of Mr. Kohntopp's concern with using the common law definition of "interference with contract." Discussion followed. Members requested that Ms. Coster inform Mr. Taggart that the Commissioners had debated the meaning of this provision and were discussing the option of changing the law to prohibit licensees from directly dealing with a buyer or seller who is represented by another brokerage.
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- **Draft Guideline-Broker Requirement to be Available:** Pam Trees moved to adopt, as presented, the proposed New Guideline on Broker Requirement to be Available. Motion carried.

Idaho Association of REALTORS® Report 9:00 a.m.: IAR President, Willis Stone, presented a legislative update. They are currently working on a bill that would allow deeds of trust to be used on property up to 80 acres. Their Executive Committee met January 16, 2008 and discussed some legislative ideas to resolve the sales price disclosure issue. Discussion followed.

Education:

- **New Education Director:** Jeanne Jackson-Heim reported that IREC has hired Mandy Frary as the Education Director. Mandy will start Tuesday, January 22, 2008.
 - **BCOO Update:** The Education Council met yesterday and discussed the BCOO Subject Matter Experts.
 - **BSU Proposal for IDW: "Train the Trainer":** BSU will present Train the Trainer at IDW to be held May 20-21, 2008 at the Riverside Double Tree. The Education Council reviewed and recommended approval of BSU's proposal for IDW Train the Trainer course. Motion was made by Pam Trees to approve the BSU proposal for IDW and to authorize Jeanne Jackson-Heim to execute the contract on behalf of the Commission. Motion carried.
 - **BSU Proposal for Core 2008:** Motion made by Pam Trees to Approve BSU proposal for Core 2008 taping and to authorize Jeanne Jackson-Heim to execute the contract on behalf of the Commission. Motion carried.
 - **BSU Contract Addendum for BCOO Course Development:** Additional cost has been incurred for the BCOO course development due to the joint decision of IREC and BSU to delay the BCOO revision to be completed at the same time as the Broker Management course. Motion made by Pam Trees to approve One Thousand Five Hundred Dollars (\$1,500.00) from Civil Penalty fine money for the BSU contract Addendum for the BCOO course development and to authorize Jeanne Jackson-Heim to execute the contract on behalf of the Commission. Motion carried.
 - **Core 2008:** Jeanne Jackson-Heim handed out a list of suggestions from the Education Council and the IAR for Core 2008 course topics. Commissioners requested Case Law and Legislative updates, Short Sales and Foreclosures, Recognizing Loan Fraud, Fair Housing Act "Indian Reservations", Sloppy Contracts and CE Requirements be included in the curriculum for this years Core course.
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- **Loan Fraud DVD:** Jeanne has met with the Department of Finance on a Loan Fraud DVD; IREC will be working with IAR to produce a DVD of our own using parts of the Georgia Loan Fraud DVD.

Executive Director's Report:

- **Civil Fine Money:** Jeanne Jackson-Heim reported that a regular report of the CP fine monies will be included in the monthly meeting agenda starting next month.
- **Follow-up Broker Letter Trust Accounts:** There were many inquiries regarding the Trust Accounts broker letter. There was discussion on whether the Commission should send a follow-up letter. It was decided to post the Trust Account letter online with an e-mail link for questions.
- **Revised Guideline Cancellation and withdrawals of Listings:** A motion was made by Kelly Fisher to approve, as presented, the revised Guideline on Cancellation and Withdrawals of Listings. Motion carried.
- **Governors Recommended FY 2009 Budget:** Governor's Recommended Budget was reviewed by Commissioners.
- **Real Estatement:** IREC has received a complaint about the Real Estatement not being printed. Discussion followed.
- **Licensee Search:** Changes to IREC's licensee search are almost complete. We have received great comments on the new improvements and we continue to diligently work on IREC's website.

Matters from Commissioners:

- **Meeting schedule:** Due to scheduling conflicts the June Commission meeting was changed from June 19, to June 26, 2008.
- **Travel Arrangements:** Tammy Anderson requested Commissioners to notify her via e-mail of who will be needing hotel accommodations for April's meeting in Twin Falls.
- **ARELLO:** Commissioners instructed Tammy to check on registration for ARELLO's midyear meeting in Pasadena California.
- **Website:** There was discussion on giving all licensees the ability to see most of their own information on the website. Brokers would have access to see their licensees' education and E&O status.

Enforcement Stipulations:

Stipulation and Fine Matrix for CE: Craig Boyack presented a stipulation form and fine matrix. Motion was made by Kelly fisher to approve the stipulation form subject to review of the final draft. Motion carried.

Voluntary Licensee Surrender: Motion made by Kelly fisher to Ratify Voluntary Licensee Surrender received from Barbara Mae Corman. Motion carried.

Case of Staff vs. William C. Kasten (Ex-Parte). In consideration of the facts and evidence presented, motion was made by Kelly Fisher to accept without exception the Stipulation which had been agreed to by William C. Kasten and that the "Final Order" for disciplinary actions against Mr. Kasten be as follows:

- 1.) That William C. Kasten shall be issued a formal reprimand.
- 2.) That William C. Kasten pay a civil fine in the amount of Five Hundred Dollars (\$500.00) by February 23, 2008.
- 3.) That William C. Kasten is required to successfully complete a live Cracking the Code course by July 23, 2008.
- 4.) That William C. Kasten pay the cost and attorney's fees incurred in the investigation/prosecution of this matter in the amount of Three Hundred Dollars (\$300.00) by February 23, 2008.
- 5.) That the Commission shall be entitled, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately suspend Respondent's license in the event the Respondent fails to timely comply with any term or condition of the Final Order. Notice of such action sent to the most current address provided by the Respondent to Staff shall be deemed sufficient. Any license suspension may be reinstated upon petition to the Commissioners after compliance of the Stipulation term or condition.

Motion carried. A copy of the "Final Order" is attached hereto and made a part of these minutes.

Case of Staff vs. Tariq I. Mian (Ex-Parte). In consideration of the facts and evidence presented, motion was made by Andy Enrico to accept without exception the Stipulation which had been agreed to by Tariq I. Mian and that the "Final Order" for disciplinary actions against Mr. Mian be as follows:

- 1.) That Tariq I. Mian shall be issued a formal reprimand.
 - 2.) That Tariq I. Mian pay a civil fine in the amount of One Thousand Dollars (\$1000.00) in two monthly payments of Five Hundred Dollars (\$500.00) each, with the first payment due by March 20, 2008 and the second payment due by April 21, 2008.
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3.) That Tariq I. Mian successfully complete either a live Ethics course or a live Cracking the Code course by July 23, 2008.

4.) That Tariq I. Mian pay the cost and attorney's fees incurred in the investigation/prosecution of this matter in the amount of Three Hundred Dollars (\$300.00) by February 20, 2008.

5.) That the Commission shall be entitled, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately suspend Respondent's license in the event the Respondent fails to timely comply with any term or condition of the Final Order. Notice of such action sent to the most current address provided by the Respondent to Staff shall be deemed sufficient. Any license suspension may be reinstated upon petition to the Commissioners after compliance of the Stipulation term or condition.

Motion carried. A copy of the "Final Order" is attached hereto and made a part of these minutes.

Case of Staff vs. Michael S. Tueller (Ex-Parte). In consideration of the facts and evidence presented, motion was made by Pam Trees to accept without exception the Stipulation which had been agreed to by Michael S. Tueller and that the "Final Order" for disciplinary actions against Mr. Tueller be as follows:

1.) That Michael S. Tueller shall be issued a formal reprimand.

2.) That Michael S. Tueller pay a civil fine in the amount of One Thousand Dollars (\$1000.00) by February 23, 2008.

3.) That Michael S. Tueller successfully complete a live (4) four hour Agency course by July 23, 2008.

4.) That Michael S. Tueller pay the cost and attorney's fees incurred in the investigation/prosecution of this matter in the amount of Three Hundred Dollars (\$300.00) by February 23, 2008.

5.) That the Commission shall be entitled, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately suspend Respondent's license in the event the Respondent fails to timely comply with any term or condition of the Final Order. Notice of such action sent to the most current address provided by the Respondent to Staff shall be deemed sufficient. Any license suspension may be reinstated upon petition to the Commissioners after compliance of the Stipulation term or condition.

Motion carried. A copy of the "Final Order" is attached hereto and made a part of these minutes.

CE Stipulations:

Case of Staff vs. Theodore H. Rowland (Ex-Parte). In consideration of the facts and evidence presented, motion was made by Kelly Fisher to accept without exception the Stipulation which had been agreed to by Theodore H. Rowland and that the "Final Order" for disciplinary actions against Mr. Rowland be as follows:

- 1.) That Theodore H. Rowland shall be issued a formal reprimand.
- 2.) That Theodore H. Rowland pay a civil fine in the amount of Five Hundred Dollars (\$500.00) by February 23, 2008.
- 3.) That Theodore H. Rowland pay the cost and attorney's fees incurred in the investigation/prosecution of this matter in the amount of One Hundred Twenty-Five Dollars (\$125.00) by February 23, 2008.
- 4.) That the Commission shall be entitled, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately suspend Respondent's license in the event the Respondent fails to timely comply with any term or condition of the Final Order. Notice of such action sent to the most current address provided by the Respondent to Staff shall be deemed sufficient. Any license suspension may be reinstated upon petition to the Commissioners after compliance of the Stipulation term or condition.

Motion carried. A copy of the "Final Order" is attached hereto and made a part of these minutes.

Case of Staff vs. Katherine Wise (Ex-Parte). In consideration of the facts and evidence presented, motion was made by Kelly Fisher to accept without exception the Stipulation which had been agreed to by Katherine Wise and that the "Final Order" for disciplinary actions against Ms. Wise be as follows:

- 1.) That Katherine Wise shall be issued a formal reprimand.
 - 2.) That Katherine Wise pay a civil fine in the amount of Two Hundred Fifty Dollars (\$250.00) by February 23, 2008.
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3.) That Katherine Wise pay the cost and attorney's fees incurred in the investigation/prosecution of this matter in the amount of One Hundred Twenty-Five Dollars (\$125.00) by February 23, 2008.

4.) That the Commission shall be entitled, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately suspend Respondent's license in the event the Respondent fails to timely comply with any term or condition of the Final Order. Notice of such action sent to the most current address provided by the Respondent to Staff shall be deemed sufficient. Any license suspension may be reinstated upon petition to the Commissioners after compliance of the Stipulation term or condition.

Motion carried. A copy of the "Final Order" is attached hereto and made a part of these minutes.

Case of Staff vs. Patrick J. Schleibaum (Ex-Parte). In consideration of the facts and evidence presented, motion was made by Kelly Fisher to accept without exception the Stipulation which had been agreed to by Patrick J. Schleibaum and that the "Final Order" for disciplinary actions against Mr. Schleibaum be as follows:

1.) That Patrick J. Schleibaum shall be issued a formal reprimand.

2.) That Patrick J. Schleibaum pay a civil fine in the amount of Five Hundred Dollars (\$500.00) by February 23, 2008.

3.) That Patrick J. Schleibaum pay the cost and attorney's fees incurred in the investigation/prosecution of this matter in the amount of One Hundred Twenty-Five Dollars (\$125.00) by February 23, 2008.

4.) That the Commission shall be entitled, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately suspend Respondent's license in the event the Respondent fails to timely comply with any term or condition of the Final Order. Notice of such action sent to the most current address provided by the Respondent to Staff shall be deemed sufficient. Any license suspension may be reinstated upon petition to the Commissioners after compliance of the Stipulation term or condition.

Motion carried. A copy of the "Final Order" is attached hereto and made a part of these minutes.

Case of Staff vs. Patricia A. Wunder (Ex-Parte). In consideration of the facts and evidence presented, motion was made by Kelly Fisher to accept without exception the Stipulation which had been agreed to by Patricia A. Wunder and that the "Final Order" for disciplinary actions against Ms. Wunder be as follows:

- 1.) That Patricia A. Wunder shall be issued a formal reprimand.
- 2.) That Patricia A. Wunder pay a civil fine in the amount of Seven Hundred Fifty Dollars (\$750.00) in (4) four Monthly payments of not less than One Hundred Eighty-Seven Dollars and Fifty Cents (187.50) each, with the first payment due March 23, 2008; the second payment due April 23, 2008; third payment due by May 23, 2008; and the final payment due by June 23, 2008.
- 3.) That Patricia A. Wunder pay the cost and attorney's fees incurred in the investigation/prosecution of this matter in the amount of One Hundred Twenty-Five Dollars (\$125.00) by February 23, 2008.
- 4.) That the Commission shall be entitled, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately suspend Respondent's license in the event the Respondent fails to timely comply with any term or condition of the Final Order. Notice of such action sent to the most current address provided by the Respondent to Staff shall be deemed sufficient. Any license suspension may be reinstated upon petition to the Commissioners after compliance of the Stipulation term or condition.

Motion carried. A copy of the "Final Order" is attached hereto and made a part of these minutes.

Executive Session: In accordance with section 67-2345 (1)(f), Idaho Code, a motion was made by Steve Kohntopp to adjourn to executive session to obtain advice of legal counsel concerning its review of the Recommended Order in Staff vs. Michael Santopolo. Motion carried.

Regular Session: There being no further purpose for an executive session, a motion was made by Steve Kohntopp to adjourn the executive session. Motion carried.

Case of Staff vs. Michael Santopolo: (Review of Recommended Order) In consideration of the facts and evidence presented, a motion was made by Pam Trees to adopt in part and reject in part the findings and conclusions of the Hearing Officer's Recommended Order and to issue a Final Order as follows:

1.) The findings of fact set forth in pages 2-3 of the hearing officer's Recommended Order and as clarified by the hearing officer's September 26, 2007 Order, are adopted in their entirety as the Commission's own factual findings in support of the Final Order.

2.) Each party has argued to have some of the Hearing Officer's legal conclusions adopted, and others rejected. Having considered those arguments, and after careful scrutiny of the record in this case, the Commission concludes that Michael Santopolo's conduct did not amount to a violation under Idaho Code section 54-2086(1)(e) for failure to disclose an adverse material fact. The Commission concedes that this hard-fought case presented a difficult and very close issue for decision. However, given the apparent legitimacy of the settlement letter from the attorney office, the Commission concludes that the fact that the earnest money checks had bounced would not be sufficient to have established a reasonable belief that the buyers were unable or unwilling to complete their obligation under the contract. The Commission agrees with the hearing officer's conclusion that Michael Santopolo's conduct did not amount to a violation of Idaho Code section 54-2060(2) for engaging in a continued or flagrant course of misrepresentation. Again, the Commission finds that the facts of this case presented very difficult issues of law to determine. And although the Staff did not ultimately prevail in proving either charge of misconduct, it did not prosecute without basis in law or fact.

3.) In view of the fact that no misconduct has been proved, no award of costs or attorney fees shall be awarded under Idaho Code section 54-2059 (1). Michael Santopolo has requested he be awarded his costs and attorney fees under Idaho Code section 12-117(1). That section, however, applies to permit a court to award fees against a state agency that has acted unreasonably. Section 12-117(1) does not authorize such award by the Commission and does not apply in these proceedings. Moreover, and as stated above, the Commission finds that Staff's prosecution of violations in this case, although unsuccessful, were not pursued unreasonably or without basis in law or fact.

Motion carried. A copy of the "Final Order" is attached hereto and made a part of these minutes.

Executive Session: In accordance with section 67-2345 (1)(d) & (f), Idaho Code, a motion was made by Steve Kohntopp to adjourn to executive session to review probable cause memoranda submitted pursuant to Section 54-2058(1), Idaho Code. Motion carried. Members reviewed probable cause memorandum.

Regular Session: There being no further purpose for an executive session, a motion was made by Steve Kohntopp to adjourn the executive session. Motion carried.

Probable Cause Memo # 07-37800 – 07-37801: A motion was made by Kelly Fisher finding that the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Section 54-2058(1), was sufficient to proceed with the filing of formal action on each of the violations presented, excepting the alleged violation of Sections 54-2054(5) and 54-2060(8), for using a double contract. The Executive Director is permitted to submit additional facts to more fully substantiate a violation of that provision. Commission staff is authorized to file an administrative complaint in accordance with the foregoing. Motion carried.

Executive Session: In accordance with section 67-2345 (1)(d) & (f), Idaho Code, a motion was made by Kelly Fisher to adjourn to executive session to review special request licensure submitted pursuant to Section 54-2022(2) & (6), Idaho Code. Motion carried.

Regular Session: There being no further purpose for an executive session, a motion was made by Kelly Fisher to adjourn the executive session. Motion carried.

Petition for Review #08-037 – Request for Special Consideration seeking Certification of Course Content as within the Topic Area Approved for Continuing Education Credit 54-2036: Following discussion and review of the documents submitted, a motion was made by Kelly Fisher to deny the request, but course may be resubmitted with changed content. Motion carried.

There being no further business, motion was made by Steve Kohntopp to adjourn the meeting at 12:38 p.m. Motion carried.

Respectfully Submitted,



Jeanne Jackson-Heim
Executive Director

JJH: tla

Attachments: Licenses Issued November and December 2007
FY07-FY08 Analysis of Active & Inactive License Base
Online License Reports
Complaint Summary Report
November and December 2007, Financial Reports
Information and Technology Reports

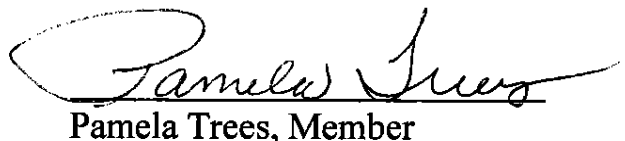
"Final Order" – William C. Kasten
"Final Order" – Tariq I Mian
"Final Order" – Michael S. Tueller
"Final Order" – Theodore H. Rowland
"Final Order" – Katherine Wise
"Final Order" – Patrick J. Schleibaum
"Final Order" – Patricia A. Wunder
"Final Order" – Michael Santopolo

Minutes of the Idaho Real Estate Commission meeting in Boise, Idaho on January 17, 2008, are hereby approved.


Steve Kohntopp, Chair


Kelly Fisher, Member


Andy Enrico, Vice Chair


Pamela Trees, Member
